

# Adjournment requests at VCAT

## Background

Adjournment of a hearing may be sought in many circumstances including inability to attend the scheduled hearing time, lack of knowledge of the case to be met, insufficient notice of hearing or to obtain legal representation.

## What is the issue?

Clarity is needed as to when and how to request adjournment of a hearing, and the best approach for different types of adjournment requests.

## Relevant provisions



1. Section 98 of the VCAT Act 1998 provides that the Tribunal is bound by the rules of natural justice. The obligation applies to the conduct of hearings, and to administrative processes. Natural justice requires that each party to a proceeding receive a hearing that is fair in all the circumstances. This includes various pre-hearing rights, such as a right to know the case to be met before the hearing commences.
2. The *Charter of Human Rights and Responsibilities Act 2006* extends the Tribunal's obligations. The Tribunal is a 'public authority' when acting in its administrative capacity. This includes the listing of cases and other procedural decisions. The Charter requires public authorities to act in a way that is compatible with a human right, and in making a decision, to give proper consideration to a relevant human right.
3. The Charter includes the right to a fair hearing (s 24). This may necessitate an adjournment, for example to transfer a hearing to a venue with digital sound recording. This may be necessary for a transcript to be made for the purposes of a possible appeal.
4. The Charter also includes the right to enjoy human rights without discrimination (s 8). Arguably, this may justify an adjournment to transfer a hearing to a venue with digital sound recording.

## VCAT Practice note

5. The Tribunal has published a practice note outlining its general approach to granting adjournments in the Residential Tenancies List. The practice note provides that requests for adjournment must be:
  - i. in writing; and
  - ii. received by the Tribunal no later than 4.00pm two business days prior to the scheduled hearing date.
6. If received later than two business days before the hearing, the parties must attend the hearing and the presiding member will consider the application on its merits.

7. The written consent of other parties should ideally be obtained before requesting an adjournment, and included with the request to VCAT. Other evidence in support of the request should also be included, such as medical certificates, travel tickets, etc.
8. The practice note provides that 'adjournments will generally not be granted where the party or agent seeking the adjournment is an organisation and another person is able to represent the party and give evidence.'

### **Adjournment of possession orders under s 331 RTA**

9. Section 331 of the Residential Tenancies Act provides that the Tribunal may adjourn or dismiss an application for possession based on a notice to vacate for rent arrears where the Tribunal considers that satisfactory arrangements have been or can be made to avoid financial loss to the landlord.
10. The VCAT practice note provides that a three month adjournment of a possession order will normally be granted once, on application by the landlord, without the parties having to attend the Tribunal. The tenant's informed consent must be obtained.
11. A tenant or their representative may request an adjournment under s 331. Evidence must be produced of the tenant's ability to pay the outstanding amount within a reasonable time, as well as to pay rent in the future. It would be unusual for an adjournment to be granted prior to the hearing, based solely on the written request.

### **Consolidation of proceedings**

12. A tenant who has received an application by a landlord may wish to make an application to the Tribunal in respect of the same tenancy agreement. The tenant or their representative may request that the applications be heard and determined together at the same hearing. A Tribunal member may order under s 82 of the VCAT Act for two or more applications to be consolidated. To determine all issues together, and avoid multiplicity of proceedings, an adjournment may be requested.

### **What if an adjournment request is refused?**

13. A tenant who did not attend a hearing may be able to seek review of any orders made in his or her absence. See ss 120 and 126 of the VCAT Act regarding review applications and extensions of time.

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific case and you require advice, then you should contact us on **(03) 9411 1444**

### **Tenants Union Legal Service**

#### **References**

*Residential Tenancies Act 1997 s 331*

*Victorian Civil and Administrative Act 1998 ss 82, 98, 120 & 126.*

*Charter of Human Rights and Responsibilities Act 2006 ss 4, 8, 24 & 38.*